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JONES' ADM'RS *v.* COLEMAN.

June 14, 1917.

[92 S. E. 910.]

1. Executors and Administrators (§ 221 (9)*)—Claims against Estates—Evidence.—In an action against an estate based upon a mutilated promissory note alleged to have been executed by deceased, evidence held insufficient to sustain the burden resting upon plaintiff under Code 1904, § 2841a, par. 123, providing that a cancellation made unintentionally or under a mistake or without the authority of the holder is inoperative, but, where an instrument or any signature thereon appears to have been canceled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally or under a mistake or without authority.

[Ed. Note.—For other cases, see Executors and Administrators, Cent. Dig. §§ 903½, 1874, 1876.* 2 Va.-W. Va. Enc. Dig. 495; 5 Va.-W. Va. Enc. Dig. 600.]

2. Bills and Notes (§ 491*)—Actions—Presumptions.—Under Code 1904, § 2841a, par. 123, providing that a cancellation made unintentionally or under a mistake or without authority of the holder is inoperative, but where an instrument or any signature thereon appears to have been canceled the burden of proof lies upon the party who alleges that the cancellation was made unintentionally or under a mistake or without authority, where it appeared that a note sued upon in an action against the maker's estate was mutilated by burning, the presumption was that the burning was intentional and done for the purpose of canceling the instrument.

[Ed. Note.—For other cases, see Bills and Notes, Cent. Dig. §§ 1643-1648.* 2 Va.-W. Va. Enc. Dig. 493.]

Error to Circuit Court, Brunswick County.

Action by Kate D. Coleman against W. R. Jones and another, administrators of Reps Jones, deceased. Judgment for plaintiff, and defendants bring error. Reversed and remanded.

Buford & Peterson, of Lawrenceville, and *W. R. Jones*, of Blackstone, for plaintiffs in error.

B. A. Lewis, of Lawrenceville, for defendant in error.

GRAVATT *v.* LANE.

June 14, 1917.

[92 S. E. 912.]

1. Boundaries (§ 3 (9)*)—Construction—Rule.—In construing a

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.